IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2777 OF 1988

M/s.Godrej & Boyce Mfg.Co.Ltd. .. Petitioner
V/s
P.K.Gupta, Commissioner of Income Tax, Bombay City II, and Ors. .. Respondents.

Mr.P.Pardiwala, Senior Counsel with Ms.Samidha Vedpathaki/by M/s.Maneksha & Sethna for the Petitioner.

Dr.P.Daniel, Senior Counsel with Mr.Harishankar for the Respondents.

CORAM: DR.S.RADHAKRISHNAN & J.H.BHATIA, JJ.

DATE : 10/08/2005.

JUDGMENT: - (Per S.Radhakrishnan, J.)

1. In this petition, the Petitinoer has challenged the order dated 14.6.1988 passed by the 1st Respondent- the Commissioner of the Income Tax with regard to the Assessment Year 1982-1983 and the Assessment Year 1983-1984 for the claim of interest.

2. The brief facts are that on 8.10.1982, the Petitioner Company had filed a Return of Income for the Assessment Year 1982-1983 declaring a loss of Rs.23,82,75,310/-. It appears that prior to that, the Petitioner Company had already paid a sum of Rs.6,30,00,000/- as an advance tax. Over and above, a sum of Rs.8,44,150/- was also deducted at source and paid as tax to the Respondents. On 5.6.1984 the Inspecting Assistant Commissioner, Assessment Range II(B), Bombay had computed the total income of the Petitioner Company at Rs.7,93,48,600/-. The Inspecting Assistant Commissioner determined a refund of

Rs.1,19,78,111/- together with the interest at Rs.31,14,306/- under Sectin 214 of the Income Tax Act and the amount of Rs.4,80,000/- was also charged as an interest under Section 216. The total amount of refund was computed at Rs.1,46,12,470/- and it appears that the part thereof, was adjusted towards the pending tax demands. On 2nd July, 1985 further order was passed under Section 154 of the Income Tax Act rectifying certain mistake in the assessment order and further refund was granted. Finally the Commissioner of Income Tax (Appeal) allowed the appeal partly. Based on the same, the Inspecting Assistant Commissioner by his order dated 19.2.1987 passed the assessment order giving effect to the order of the Commissioner of Income Tax (Appeals) and computed the total refund at Rs.4,87,92,034/-. There is no dispute that the entire refund amount has either been adjusted towards the pending tax demands or the balance has been paid to the Petitioner. The only grievance is with regard to the non-payment of interest on the amount refunded to the Petitioner. The Assessment Order did not grant any interest. The Petitioner therefore filed an application on 10th April, 1987 against the order dated 19.2.1987 passed by the Inspecting Assistant Commissioner, before the Commissioner of Income Tax, under Section 264 of the Income Tax Act seeking such an interest under Section 214 and 244(1A) of the said Act.

3. Similarly, for the Assessment Year 1983-84, the Petitioner Company had filed a Return of Income on 29.6.1983 showing a loss of Rs.21,83,75,509/-. On

25.2.1986, the Inspecting Assistant Commissioner completed the assessment under Section 143(3) and computed the total income at Rs.3,47,58,742/-. There was a demand of Rs.1,52,61,596/- by way of tax, after giving credit to the advance tax paid in the sum of Rs.1,02,50,000/-. Over and above, a sum of Rs.59,032/- was deducted at source. Aggrieved thereby the Petitioner had filed an Appeal abefore the Commissioner of Income Tax (Appeals) which was partly allowed on 5.1.1987. Thereafter, on 17.3.1987 the Inspecting Assistant Commissioner passed an order giving effect to the order of the Commissioner of Income Tax (Appeals), by which he determined the total income of the Petitioner Company at NIL and granted a refund of Rs.1,03,07,855/-. The Inspecting Assistant Commissioner however, did not grant any interest on the refund so determined, and therefore the Petitioner Company filed an application under Section 264 of the Income Tax Act claiming for such an interest under Section 214 and 244(1A) of the Income Tax Act.

4. In support of both the aforesaid applications filed by the Petitioner, the Petitioner had appeared before the concerned Authority- Respondent No.1 (The Commissioner of Income Tax) on 2.6.1988 and had made his submissions. Finally, the Respondent No.1- Commissioner of Income Tax, by his order dated 14.6.1988 had declined to grant any interest for the Assessment Years 1982-1983 and 1983-1984.

5. We have perused the order dated 14.6.1988 passed by

the Commissioner of Income Tax declining to grant such an interest. Mr.Pardiwalla, the learned Counsel for the Petitioner has brought to our notice that the Commissioner of Income Tax has erroneously proceeded on the basis that the petitioner's case would be covered by the provisions of law as it stood prior to the amendment which came into effect on 1st April, 1985. Mr.Pardiwalla therefore contended that as far as the Petitioner's case is concerned, the Commissioner of Income Tax ought to have considered the case in view of the changed law and not by applying the law as it stood prior to the amendment of 1985. Mr.Pardiwalla has contended that the order of the Commissioner of Income Tax declining to grant such an interest suffers from an error apparent on the face of the record. Mr.Pardiwalla has contended that the provisions of Section 214 as well as Section 244(1-A) of the Income Tax Act have not been properly & correctly construed by the Commissioner of Income Tax in the aforesaid order dated 14.6.1988 and that he has wrongly construed the same.

6. In support of his submissions, Mr.Pardiwalla, referred to and relied upon the Division Bench Judgment of our High Court, with regard to the interpretation of Section 214 of the Income Tax Act in the case of **Commissioner of Income Tax V/s.Saswad Mali Sugar Factory Ltd. - 249 ITR 756 (Bom.).** In that case, the Assessment Year was 1980-1981 and the assessment was completed on 25th July, 1983. The assessee had appealed against the same and the appeal was allowed in December, 1987. Based on the same, the Assessment Order was

passed on 24th October, 1988 granting refund to the assessee including the interest from 1st April, 1980 till 24th July, 1983 being the date of completion of the assessment. Thereafter, the Commissioner of Income Tax had approached this Court by way of an appeal. It was argued on behalf of the Appellant Department that the amendment of Section 214 which came into force from 1st April, 1985 by Taxation Laws (Amendment) Act, 1984 has no retrospective effect and as such, the interest could not have been granted w.e.f.1st April, 1980. This Court considered the said objection and observed as under:-

"We do not find any merit in this appeal. In this appeal, we are concerned with the assessment year 1980-81. Sub-section (1A) was substituted in section 214 with effect from April 1, 1985. It not only refers to the appellate orders under section 250 and section 254 but it also refers to several other orders like orders under sections 147, 154, 155, 260, 262, 263, 264 and 245D. In the case of Modi Industries Ltd.v.CIT (1995) 216 ITR 759 (SC), at page 805, it has been held that even after the amendment of Section 214 with effect from April 1, 1985, the period for which the interest has to be paid remains the same, i.e. from the first day of the relevant assessment year up to the date of the regular assessment (first assessment). In the aforestated judgment, the Supreme Court has confirmed the decision of this Court in the case of CIT v.Carona Sahu Co.Ltd. (1984) 146 ITR 452 (FB). However, it is urged on behalf of the Department that in the present matter the Taxation Laws (Amendment) Act, 1984, has no application. That, the said amending Act does not operate retrospectively. That in the present matter, the regular assessment was completed on July 2, 1983. That, since the Taxation Laws (Amendment) Act, 1984, has been brought into force with effect from April 1, 1985, i.e., after the passing of the regular assessment order, the Assessing Officer erred in granting interest to the assessee with effect from April 1, 1980. We do not find any merit in this argument. The taxation Laws (Amendment) Act, 1984, is procedural in nature and, therefore, it will apply to all pending actions. Secondly in the present matter, the right to receive the interest accrued to the assessee only on October 24, 1988, when the Assessing Officer gave effect to the order of the first appellate authority dated December 11, 1987, by which the assessee's appeal came to be allowed. Therefore, the amending Act 1984, would apply

to this case. Lastly, a bare reading of Section 214(1A) indicates that the said section 214(1A) would apply to all cases where interest becomes payable as a result of an order under Section 147 or section 154 or section 250 or section 254 or section 262 or section 263. Therefore the Taxation Laws (Amendment) Act, 1984, is applicable to this case and we do not find any merit in the contention of the Department that the said amending Act is not applicable to the facts of this case. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee and against the Department."

In the aforesaid judgment, this Court has very clearly held that the Taxation Laws (Amendment) Act, 1984 is procedural in nature and therefore it will apply to all the pending actions, and as far as assessee in the said case was concerned, the assessment year started from 1st April, 1980 and accordingly, this Court found that there was nothing wrong in the order granting the interest from 1st April, 1980 till the date of the assessment order.

7. Mr.Pardiwalla also referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Modi Industries Limited and Ors V/s. the Commissioner of Income Tax and Another -(1995) 216 ITR 759** wherein the Supreme Court was dealing with the scope of sub-section 1-A of Section 244 of the Income Tax Act, and while interpreting the same, has observed as under:-

"Sub-section (1A) of Section 244 does not affect the operatiOn of sectin 214 in any manner whatsoever. The period during which interest has to be paid under section 214 is the first day of the relevant assessment year to the date of the assessment order. The period covered by section 244(1A) is the period commencing from the date of payment of tax or penaly. Under Chapter XVII of the Act, tax may be collected from an assessee by way of deduction at source, advance payment and by a notice of demand under section 156. But, the amount of

tax deducted at source is treated as income-tax paid by the assessee upon the completion of the assessment proceedings (Section 199(1)).

Similarly, the amount of advance tax paid has to be treated as payment of tax and credit for this amount has to be given to the assessee in the regular assessment (section 219). Any excess amount remaining to the credit of the assessee thereafter will have to be refunded to the assessee. The amount which was retained by the Income-tax Officer and adjusted against the tax demand must be treated as payment of tax pursuant to the assessment aorder by the assessee. Advance tax or tax deducted at source loses its identity as soon as it is adjusted against the liability created by the assessment order and becomes tax paid pursuant to the assessment order.

Therefore, the phrase "any amount having been paid.... after March 31, 1975" occuring in sub-section (1A) of section 244 must be construed to mean not only the amount which has been paid directly pursuant to the order of assessment but will also include the amount of tax deducted at source and advance tax, which were lying to the credit of the assessee and were ultimately adjusted and set off against the tax demands raised in the assessment order. The excess amount of tax paid under sub-section (1A) of sectin 244 must be calculated by treating the amount of tax deducted at source and the amount of advance tax which were adjusted against the assessee’s liability to pay tax as well as the amount of tax paid directly upon the assessment under Chapter XVII of the Income-tax Act. In other words, so far as the amount of advance tax is concerned, it must be understood to have been paid "in pursuance of any order of assessment" only on the date of the original order of assessment - and not on the date of actual payment. The reason is obvious, on the day the advance tax amount is paid there is no assessment and, hence, it cannot be said to have been paid "in pursuance of any order of assessment". This view was also taken by the Punjab and Haryana High Court in the case of Leader Engineering Works [1989] 178 ITR 529.

Interest under sub-section (1A) of section 244 is payable when the tax or penalty paid by an assessee pursuant to an order of assessment has been reduced in appeal or any other proceeding. In such a case an excess amount of tax or penaly paid by the assessee will have to be refunded and the Central Government has to pay interest on the excess amount from the date on which such amount was paid to the date on which the refund was granted. On course, there can be no question of paying interest both under section 214(1A) and section 244(1A) simultaneously. The rate of interest being the same under both the provisions, there would be no difference in the actual amount of interest payable, whichever provision is applied.

This sub-section substantially alters the scheme of payment of interest on refund contained in sections 243

and 244 of the Income-tax Act, but does not affect the scope of section 214 in any way. Section 214 deals with payment of interest on the amount of tax found to have been paid in excess of the tax determined as payable on the regular assessment. Interest will have to be paid from the first day of the relevant assessment year to the date of the regular assessment, i.e., the first assessment. If the amount on which the interest was payable was varied subsequent to the first assessment, then the quantum of interest had also to be increased or decreased accordingly. But the period for which the interest had to be paid was not altered by the newly substituted sub-section (1A) of section 214."

8. Mr.Pardiwalla has therefore contended that both the above judgments have very clearly laid down the law as far as section 214 as well as section 244(1A) of the Income Tax Act are concerned. He therefore submitted that based on the said provisions of law, the Petitioner is entitled to interest. Mr.Pardiwalla produced before us two Charts showing the calculations of the interest to which the Petitioner is entitled to, for both the Assessment Years 1982-1983 as well as 1983-1984. Both the Charts are taken on record and marked as "X" and "Y" for identification.

9. Mr.Daniel, the learned Counsel who appeared on behalf of the Respondents-Department, could not dispute the propositions of law as laid down by this Court in the case of **Saswad Mali Sugar Factory Limited** while interpreting Section 214 of the Income Tax Act, as well as by the Supreme Court in the case of **Modi Industries Limited** while interpreting Section 244(1-A) of the Income Tax Act.

10. Having regard to the facts and circumstances of the case, we are not going to determine the exact amount of

interest payable to the petitioner. However, we make it clear that the law has been very clearly laid down by the Division Bench of this Court in the aforesaid case of **Saswad Mali Sugar Factory Limited** so far as Section 214 of the Income Tax Act is concerned, and by the Supreme Court in the aforesaid case of **Modi Industries Limited** so far as Section 244(1-A) of the Income Tax Act is concerned. Under these circumstances, we direct the Respondent No.1 to compute the interest payable to the Petitioner as indicated in the two Charts produced before us by the learned Counsel for the Petitioner for both the Assessment Years 1982-1983 and 1983-1984, in accordance with law, as expeditiously as possible, preferrably within a period of three months from today. Rule is accordingly made absolute in the above terms.

(DR.S.RADHAKRISHNAN J.)

(J.H.BHATIA J.)